

Calendar No. 1616

86TH CONGRESS }
2d Session }

SENATE

} REPORT
No. 1553

MRS. BETTY L. FONK

JUNE 13, 1960.—Ordered to be printed

Mr. HART, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 4964]

The Committee on the Judiciary, to which was referred the bill (H.R. 4964) for the relief of Mrs. Betty L. Fonk, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to pay to Mrs. Betty L. Fonk, of Bloomington, Ind., the sum of \$5,000 as compensation for personal injuries and expenses resulting from an accident involving a U.S. Army vehicle in Frankfurt-am-Main, Germany, on June 22, 1955.

STATEMENT

Mrs. Betty L. Fonk, the dependent wife of Sgt. Alvin Fonk of the U.S. Army and then herself a civilian employee of the Army, was struck and injured by a U.S. vehicle on June 22, 1955, at Frankfurt, Germany. The vehicle was assigned to the U.S. Army and Air Force European exchange system and was driven by an employee of that organization in the scope of his employment. The report of the Department of the Army to the committee on the bill indicates that subsequent investigation established that the proximate cause of the accident was the negligence of the driver of the vehicle.

Mrs. Fonk's claim was evaluated at \$2,000 by the Army under the then applicable statute which limited recovery to reasonable medical, hospital, or burial expenses actually incurred. (That limitation was removed by Public Law 446 of the 84th Cong., 2d sess. (Mar. 29, 1956, ch. 103, 70 Stat. 60).)

In its report to the Congress on the proposed legislation the Department of the Army has commented:

Mrs. Fonk never accepted or rejected this proposed settlement nor did she file an appeal with the Secretary of the Army, although her attorneys requested, and were granted, an extension of the 30-day time limit for appeal to the Secretary.

The U.S. Government has granted no waiver of its sovereign immunity permitting judicial suit for injuries arising out of torts of its agents occurring in foreign countries. The act of July 3, 1943 (57 Stat. 372; 10 U.S.C. 2733), as amended by the act of March 29, 1956 (70 Stat. 60), provides for administrative settlement of claims for personal injury caused by actions of military personnel or civilian employees of the Department of the Army while acting within the scope of their employment. Recovery under this act for claims arising on or before March 29, 1956, is limited to reasonable medical, hospital, or burial expenses actually incurred. Since Mrs. Fonk, as the dependent wife of a serviceman, received the bulk of her medical care at no personal expense, she would have received minimal recovery under this act. The settlement offered to Mrs. Fonk was more liberal because it was made by the Army and Air Force Exchange Service in its capacity as self-insurer and not circumscribed by the available statutory waiver-of-immunity provisions. It represented the considered judgment of officials charged with the responsibility of adjudicating such claims and was determined in accordance with standards evidenced by judicial and administrative awards in similar cases. Mrs. Fonk was afforded the opportunity of appealing this determination and presenting additional evidence for the consideration of the Secretary of the Army, but declined to do so. In the opinion of the Department of the Army the proposed settlement of \$2,000, which Mrs. Fonk may still accept, constitutes equitable compensation for the injuries sustained by her, and, consequently, there is no justification for the enactment of subject bill. Accordingly, this Department is opposed to the enactment of H.R. 8894.

It may be noted that as Mrs. Fonk was a civilian employee of the U.S. Army at the time of her injury, she may recover benefits under the Federal Employees' Compensation Act should it be determined that she was injured while in the performance of her duty (5 U.S.C. 751). Furthermore, should Mrs. Fonk be entitled to compensation under that act, that remedy is declared by law to represent her sole recourse against the U.S. Government arising out of her injury (5 U.S.C. 757(b)). The Bureau of Employees' Compensation, by letter dated August 23, 1957, advised the Department of

the Army that as Mrs. Fonk had filed no formal claim for compensation, no adjudicative action had been taken in the case. It would appear that the committee may wish to obtain the views of the Bureau of Employees' Compensation in regard to the appropriateness of compensation of Mrs. Fonk by subject private relief legislation.

The bill has been considered by a subcommittee which recommends it favorably.

The committee agrees with the recommendation of the subcommittee and recommends the bill favorably.

Attached and made a part of this report are (1) a report of the Department of the Army dated January 31, 1958, and (2) a copy of the clinical record (consultation report) for the claimant dated September 12, 1955.

DEPARTMENT OF THE ARMY,
Washington, D.C., January 31, 1958.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives.*

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of the Army with respect to H.R. 8894, 85th Congress, a bill for the relief of Mrs. Betty L. Fonk.

This bill provides as follows:

"That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay out of any money in the Treasury not otherwise appropriated, the sum of \$10,000 to Mrs. Betty L. Fonk, of Bloomington, Indiana, in full settlement of all claims against the United States. Such sum represents compensation for personal injuries, and all expenses incident thereto sustained as the result of an accident involving a United States Army vehicle in Frankfurt-am-Main, Germany, on June 22, 1955."

The Department of the Army is opposed to the enactment of this bill.

Records of the Department of the Army reveal that Mrs. Betty L. Fonk, dependent wife of Sgt. Alvin Fonk, U.S. Army, and herself a civilian employee of the U.S. Army, was injured at Frankfurt, Germany, when struck by a vehicle assigned to the U.S. Army and Air Force European Exchange system, driven by an employee of that organization within the scope of his employment. Investigation established that the accident was proximately caused by the negligence of the driver of the vehicle. Mrs. Fonk was taken to the 10th General Dispensary, U.S. Army, and treated for bruises of the face, arms, legs and lower back. Mrs. Fonk reports that after X-rays were taken, the doctor at the dispensary told her that she had a severe contusion of the left buttock and left para spinal muscles and a possible fracture in the area of the spine. She also stated that she underwent subsequent examination at an Air Force hospital in England, and that the physician at that installation confirmed the fact that she had suffered a fractured vertebra, informed her that the point of active treatment had passed, prescribed rest and inactivity, and predicted that she would suffer a "rheumatic reminder" for the rest of her life.

Mrs. Fonk, by letter dated January 25, 1956, stated that she still suffered considerable constant pain in her back, was forced to spend

a great deal of time in bed, could not engage in employment, nor could she pursue normal activities or exercise. She further stated that the actual medical bills which she accrued as a result of this condition are "incidental compared to the cost of the pain I am suffering" and that she had no documentation of any sums actually expended nor did she have any idea as to what expenditures would be necessitated in the future as a result of this condition. Mrs. Fonk also submitted an unattested document dated November 21, 1955, which she declared represented a true copy of a statement by Philip T. Holland, M.D., Bloomington, Ind. This document states pertinently as follows:

"Patient has tenderness over the left posterior superior iliac spine and lateral thereto with some tenderness of the paravertebral muscles on the left side of the upper sacral area. Hyperextension of the hip joints does not reproduce the pain. Leg-raising signs are essentially normal. There is tenderness over the region of the fourth and fifth thoracic vertebra and over the interscapular muscles of the left side. The pain of which the patient complains as a backache is referred to the midlumbar region and is not localized very sharply. The spinal curves are within a good normal range. There is no apparent scoliosis nor excessive lordosis. Examination of the X-rays reveals on the anterior aspect of the third lumbar vertebra a fracture with comminution of bony fragments causing lipping at the anterior and lateral margin of the upper articular surface of this vertebra.

"I have recommended to Mrs. Fonk that she wear for a period of about 2 months continuously a special Spencer-type corset with two steel braces in the back thereof. This is then to be gradually discontinued after that time in order to allow regaining of strength of the muscles of the back following the period of firm support."

Under date of July 11, 1955, Mrs. Fonk submitted a claim in the amount of \$10,000 to the Headquarters, Frankfurt Subarea, U.S. Army. This was investigated by the Claims Division, Office of the Judge Advocate General, Department of the Army, pursuant to Army Regulations 60-10, appendix VIII, paragraph F, and forwarded to the Board of Directors, Army and Air Force Exchange and Motion Picture Services, with the recommendation that it be approved in the amount of \$2,000. The Board of Directors approved the claim as recommended and informed Mrs. Fonk by letter pertinently as follows:

"Your claim has been given careful consideration and approved for \$2,000, provided you agree to accept that amount in full satisfaction of the claim. That amount was determined on the basis of the evidence of record to be sufficient to compensate you for the damages sustained.

"If you are willing to accept the amount approved in full satisfaction of the claim, it is requested that you sign in ink, date, and complete the enclosed settlement agreement, in triplicate, and return it to this office.

"You may appeal from this action to the Secretary of the Army. If you desire to do this, it is requested that you do so in writing, addressed to the Secretary of the Army, through this Office, within 30 days of the receipt of this letter. There is no form prescribed for such appeal. However, it should fully set forth the grounds relied upon and should include any additional evidence you may possess in support of your claim."

Mrs. Fonk never accepted or rejected this proposed settlement nor did she file an appeal with the Secretary of the Army, although her

attorneys requested, and were granted, an extension of the 30-day time limit for appeal to the Secretary.

The U.S. Government has granted no waiver of its sovereign immunity permitting judicial suit for injuries arising out of torts of its agents occurring in foreign countries. The act of July 3, 1943 (57 Stat. 372; 10 U.S.C. 2733), as amended by the act of March 29, 1956 (70 Stat. 60), provides for administrative settlement of claims for personal injury caused by actions of military personnel or civilian employees of the Department of the Army while acting within the scope of their employment. Recovery under this act for claims arising on or before March 29, 1956, is limited to reasonable medical, hospital, or burial expenses actually incurred. Since Mrs. Fonk, as the dependent wife of a serviceman, received the bulk of her medical care at no personal expense, she would have received minimal recovery under this act. The settlement offered to Mrs. Fonk was more liberal because it was made by the Army and Air Force Exchange Service in its capacity as self-insurer and not circumscribed by the available statutory waiver-of-immunity provisions. It represented the considered judgment of officials charged with the responsibility of adjudicating such claims and was determined in accordance with standards evidenced by judicial and administrative awards in similar cases. Mrs. Fonk was afforded the opportunity of appealing this determination and presenting additional evidence for the consideration of the Secretary of the Army, but declined to do so. In the opinion of the Department of the Army the proposed settlement of \$2,000, which Mrs. Fonk may still accept, constitutes equitable compensation for the injuries sustained by her, and consequently, there is no justification for the enactment of subject bill. Accordingly, this Department is opposed to the enactment of H.R. 8894.

It may be noted that as Mrs. Fonk was a civilian employee of the U.S. Army at the time of her injury, she may recover benefits under the Federal Employees' Compensation Act should it be determined that she was injured while in the performance of her duty (5 U.S.C. 751). Furthermore, should Mrs. Fonk be entitled to compensation under that act, that remedy is declared by law to represent her sole recourse against the U.S. Government arising out of her injury (5 U.S.C. 757(b)). The Bureau of Employees' Compensation, by letter dated August 23, 1957, advised the Department of the Army that as Mrs. Fonk had filed no formal claim for compensation, no adjudicative action had been taken in the case. It would appear that the committee may wish to obtain the views of the Bureau of Employees' Compensation in regard to the appropriateness of compensation of Mrs. Fonk by subject private relief legislation.

The cost of this bill, if enacted, will be \$10,000.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

WILBER M. BRUCKER,
Secretary of the Army.

CLINICAL RECORD

Patient's last name, first name, middle name: Fonk, Bette L., Civilian
Department, Air Force.

From: Orthopedic clinic, Burderop Park.

CONSULTATION REPORT

Chief complaint: Persistent pain in the back. Secondary complaint, occasional pain at the junction of the neck and back and in the right wrist. History indicates that on June 22, 1955, this lady was struck by an automobile while she was in Germany. As best she recalls, the blow was directly in the small of the back knocking her 8 feet forward and down on her face. There was immediate pain in the back and right wrist. X-rays were taken and she was first told that there was no injury, later, that there was a chip but that it was felt that this chip represented an old fracture, though patient can recall no previous injury. At any rate treatment has consisted of a few heat treatments. Pain has continued. Patient states that there was bruising in the back originally and that the diagnosis given first was that of left paraspinal contusion, the pain in the right wrist is described as intermittent. Pain in the back is described as constant ache which occasionally radiated all the way up the back into the arms with occasional fairly severe aching pain at the junction of the upper back and neck. Aching pain in the back is aggravated by walking, bending, lifting, and especially by sneezing. Some relief is obtained by rest and use of a hot-water bottle. Examination reveals a 30-year old, 5 feet 3 inches, 115 pounds Caucasian female in no apparent distress. There is a normal range of back motion with normal segmental rhythm though hyperextension seems to cause slight pain as does the extreme of flexion. No muscular spasm is noted. Motion of the lower extremities is normal and there are no abnormal neurologic findings, including atrophy or weakness. The only significant finding was that of tenderness to direct pressure over the lumbar spine between the levels of L2 and S1. Motion of the cervical spine is also normal. Examination of X-rays reveals a mild compression fracture of L3 with the compression being lateral and an associated comminuted fracture some forward displacement of the anterior superior lip of L3. The disk space between L2 and L3 also seems smaller than normal. Diagnosis: (1) Back pain, secondary to severe trauma to low back effecting soft tissues, disk, bone; and (2) postural back pain secondary to changes in postures subsequent to the original lesion. PTO recommendations: It is felt that the point of active treatment has been passed and that treatment now consists of a fairly strict regime including daily rest sleep on a hard bed, with the knees drawn up, and to maintain a posture with a straight flat lumbar spine and avoidance of excessive activities which irritate symptoms. This lady should be reexamined in about 3 months for further films of the involved area to see if further compression or deformity of the spine is taking place. She has stated that she intends to return to the States as soon as possible. A letter stating medical diagnosis will be sent to her husband. It is not felt that the condition is serious enough to warrant transfer to the Zone of the Interior as a hospital patient.

JAMES H. DOBYNS,
Major, USAF (MC), Chief, Orthopedic Service.

Date: SEPTEMBER 12, 1955.

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